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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-146

BILL R. HUNTER, d/b/a The Courier, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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MOTION FOR LEAVE TO FILE PETITION FOR REHEARING AND PETITION FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF CERTIORARI

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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Comes now the Petitioner, Bill R. Hunter d/b/a The Courier, pursuant to Rule 58(1) and respectfully moves this Honorable Court for leave to file this petition for rehearing and, further pursuant to Rule 58(2), respectfully petitions this Court for a rehearing of its order dated October 16, 1972, denying the earlier petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit, and for his reasons therefore states as follows:

MOTION FOR LEAVE TO FILE THIS PETITION

1. The twenty-five day limitation set out in Rule 58 expired on November 10, 1972.

2. However, an intervening circumstance of substantial or controlling effect on the instant case occurred on December 4, 1972, when this Court granted the Petition of the Pittsburgh Press Company in No. 72-419 for a Writ of Certiorari to review the decision of the Supreme Court of Pennsylvania that, under a local ordinance, Pittsburgh newspapers are forbidden to classify employment advertising under gender-designated column headings.

3. Because the First and Fifth Amendment issues involved in No. 72-419 (*Pittsburgh Press Co.* v. *Pittsburgh Commission on Human Relations, et al.*) are similar, if not identical, to the issues involved in the instant case, a review of this Court's said October 16, 1972, order denying Certiorari herein appears appropriate and justified to your petitioner.

4. Accordingly, petitioner requests that his motion for leave to file the following petition for rehearing be granted.

PETITION FOR REHEARING

1. The instant case is one of first impression and involves the constitutional and statutory validity of applying to newspapers the real estate advertising proscription contained in section 804(c) of the Civil Rights Act of 1968, 42 U.S.C. § 3604(c). That section makes it unlawful to make, print, or cause to be made, printed, or published any discriminatory real estate advertisement. The Courts below concluded that its prohibitions extend to newspapers in publishing real estate advertisements in their classified pages. By the

determinations of the Circuit and District Courts, a newspaper publishes classified real estate advertising at its peril, and is forced to make almost instantaneous decisions in its day-to-day operations on thousands of real estate advertisements as to their discriminatory impact, or absence thereof. For this and other reasons set forth in his petition for a Writ of Certiorari, your petitioner believes that the First and Fifth Amendment rights raised by the circumstances of this case are of far-reaching national importance.

2. Fundamentally, the issues raised by this case are the same as those raised in *Pittsburgh Press Co.* v. *Pittsburgh Commission on Human Relations, et al.*, No. 72-419, in which Certiorari was granted on December 4, 1972. Both cases involve the editorial and commercial operation of a newspaper's classified advertising pages. Both cases involve governmental intrusion on a free and untrammeled press requiring newspapers to become enforcement arms of government agencies charged with policing social conduct. Both demonstrate that such enforcement schemes amount to a prior restraint on First Amendment freedoms. Further, both involve the practical, onerous difficulties caused by placing the burden on newspapers to police, at their peril, thousands of classified advertisements with only the vague outlines of the statute or ordinance as guides.

4. By granting this petition for a rehearing and by granting the petition for a Writ of Certiorari herein, it is respectfully suggested that the Court would create an excellent companion case to No. 72-419. Moreover, it would provide an additional vehicle to delineate the application of the First and Fifth Amendments to the life blood of the newspaper publishing business—

the publication, sale and distribution of advertising. That this commercial aspect of the newspaper publishing business is entitled to First Amendment protection is demonstrated by this Court's application of the First Amendment to the commercial activity of newspaper sales and distribution, as illustrated by *Grossjean* v. *American Press Co.*, 297 U.S. 233 (1936).

5. In accordance with Rule 58(2), the undersigned counsel hereby certify that this petition is presented in good faith and not for delay; and that the petition is restricted to only intervening circumstances of substantial or controlling effect as above specified.

CONCLUSION

For the foregoing reasons, this motion for leave and this petition for rehearing should be granted.

Respectfully submitted,

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